Order

Michigan Supreme Court
Lansing, Michigan

November 23, 2005

Clifford W. Taylor,
Chief Justice

ADM File No. 2003-04

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of
Rule 2.511 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes of Rule 6.412 and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.511 of the Michigan Court Rules is adopted, effective January 1, 2006. The July 13, 2005, order amending Rule 2.511, also effective January 1, 2006, is only affected by this order in that the new subsection (F) in this order causes the revisions in the July 13, 2005, subsection (F) to be relettered as (G).

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.511 Impaneling the Jury

(A)-(E)[Unchanged.]

(F) Discrimination in the Selection Process.

(1) No person shall be subjected to discrimination during voir dire on the basis of race, color, religion, national origin, or sex.

(2) Discrimination during voir dire on the basis of race, color, religion, national origin, or sex for the purpose of achieving what the court believes to be a balanced, proportionate, or representative jury in terms of these characteristics shall not constitute an excuse or justification for a violation of this subsection.

~~(F) (G)~~(G)-(H) [Relettered but otherwise unchanged.]

Staff Comment: The amendment of MCR 2.511(F) is new language that states that discrimination on the basis of race, color, religion, national origin, or sex during the selection process of a jury is prohibited even in cases where the purpose would be to

achieve balanced representation. Former subrules (F) and (G) are relettered as (G) and (H).

The staff comment is not an authoritative construction by the Court.

YOUNG, J. (*concurring*). I concur in the adoption of subrule (F) to MCR 2.511, which will prohibit discrimination during voir dire against specifically enumerated protected classes. The goal of our rules is to make clear what is permissible, and what is not, within our judicial system. I believe that this amendment adds clarity to what the bench and bar are permitted to consider in selecting a jury.

I write separately to address Justice KELLY's dissenting statement. Justice KELLY opines that "[t]he amendment does not further the end of eradicating discrimination from our civic institutions and does not prevent the undermining of public confidence in the fairness of our system of justice." As she provides very little support for her conclusion, I am hard-pressed to understand why the adoption of subrule (F), which specifically prohibits discrimination in the jury selection process based on "race, color, religion, national origin, or sex," does not "further the end of eradicating discrimination" in the jury selection process against those enumerated classes. Consideration of a person's race, color, religion, national origin, or sex raises fundamental constitutional questions, particularly in the context of a jury selection process. Those who advocate against a rule precluding use of such characteristics in jury selection bear a higher burden of explanation than Justice KELLY has supplied.

TAYLOR, C.J., CORRIGAN, and MARKMAN, JJ., concurred with YOUNG, J.

KELLY, J. (*dissenting*). I oppose the addition of subrule (F) to MCR 2.511. All of the public comment that we received urged a rejection of the amendment. The Board of Commissioners of the State Bar of Michigan pointed out that existing case law "adequately speaks to the issue of discrimination during voir dire." Challenges to jury composition, it argued, should be addressed on a case-by-case basis. The amendment does not further the end of eradicating discrimination from our civic institutions and does not prevent the undermining of public confidence in the fairness of our system of justice. The Michigan Judges Association agreed that the change is unnecessary. The Michigan Department of Civil Rights, writing also for the Michigan Civil Rights Commission, believes the amendment to be vague and ambiguous and one that will engender frequent legal challenges. Several lawyers, one with the Legal Aid & Defender Association in Detroit, opined that the amendment places a hurdle before the right of many citizens to be judged by a jury of their peers. I am influenced by the public comment and, in light of it,

I oppose the amendment as unnecessary because it adds no substantive value to the case law already in existence.

CAVANAGH and WEAVER, JJ., concurred with KELLY, J.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 23, 2005

Clerk